

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICARDO CASTILLO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

UNITED RENTALS (NORTH AMERICA),
INC.,

Defendant.

No. 2:17-cv-01573-JLR

STIPULATED PROTECTIVE
ORDER ~~(PROPOSED)~~ *QR*

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order.

The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material may include the following documents and tangible things produced or otherwise exchanged:

STIPULATED PROTECTIVE ORDER
(2:17-cv-01573-JLR) - 1
4820-8427-5295v.1 0110505-000001

Davis Wright Tremaine LLP
LAW OFFICES
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Seattle, WA 98101-3045
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- a) personally identifying information of the producing party or the producing party's employees, customers, or third parties;
- b) data regarding compensation earned by or paid to employees;
- c) data reflecting sales of products and services, including information about the volume and types of sales, sales leads, sales incentives, or sales goals;
- d) customer account information, such as names, telephone numbers, account numbers, or balances;
- e) information about the producing party's computer information systems (including but not limited to systems and applications used in managing commission and compensation functions), general hardware and software specifications, and related instructions and training information;
- f) employee trainings, internal policies, and evaluation materials;
- g) employee personnel files;
- h) the financial books and records of the producing party and information pertaining to those financial books and records;
- i) information about the revenues, costs, expenses, profits and losses of the producing party;
- j) information about the producing party's short- and long-term business plans;
- k) information that the producing party has regarding its customers, competitors, suppliers, vendors, and subcontractors;
- l) information discussing, mentioning, or referring to the producing party's product development, design, or specifications;
- m) any information that the producing party is obligated by contract or state or federal law to keep confidential;
- n) any other information the producing party's business competitors could use to obtain a business or legal advantage over the producing party; and

1 o) tax, accounting, or financial information.

2 3. SCOPE

3 The protections conferred by this agreement cover not only confidential material (as
4 defined above), but also (1) any information copied or extracted from confidential material;
5 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
6 testimony, conversations, or presentations by parties or their counsel that might reveal
7 confidential material.

8 However, the protections conferred by this agreement do not cover information that is
9 in the public domain or becomes part of the public domain through trial or otherwise.

10 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

11 4.1 Basic Principles. A receiving party may use confidential material that is
12 disclosed or produced by another party or by a non-party in connection with this case only for
13 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
14 disclosed only to the categories of persons and under the conditions described in this
15 agreement. Confidential material must be stored and maintained by a receiving party at a
16 location and in a secure manner that ensures that access is limited to the persons authorized
17 under this agreement.

18 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
19 otherwise ordered by the court or permitted in writing by the designating party, a receiving
20 party may disclose any confidential material only to:

21 (a) the receiving party's counsel of record in this action, as well as
22 employees of counsel to whom it is reasonably necessary to disclose the information for this
23 litigation;

24 (b) the officers, directors, and employees (including in house counsel) of
25 the receiving party to whom disclosure is reasonably necessary for this litigation, unless the
26 parties agree that a particular document or material produced is for Attorney's Eyes Only and is
27 so designated;

1 (c) experts and consultants to whom disclosure is reasonably necessary
2 for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
3 (Exhibit A);

4 (d) the court, court personnel, and court reporters and their staff;

5 (e) copy or imaging services retained by counsel to assist in the
6 duplication of confidential material, provided that counsel for the party retaining the copy or
7 imaging service instructs the service not to disclose any confidential material to third parties
8 and to immediately return all originals and copies of any confidential material;

9 (f) during their depositions, witnesses in the action to whom disclosure
10 is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be
11 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.
12 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential
13 material must be separately bound by the court reporter and may not be disclosed to anyone
14 except as permitted under this agreement;

15 (g) mediators or arbitrators to whom disclosure is reasonably necessary
16 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

17 (h) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the information.

19 4.3 Filing Confidential Material. Before filing confidential material or
20 discussing or referencing such material in court filings, the filing party shall confer with the
21 designating party to determine whether the designating party will remove the confidential
22 designation, whether the document can be redacted, or whether a motion to seal or stipulation
23 and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be
24 followed and the standards that will be applied when a party seeks permission from the court to
25 file material under seal.

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (*see, e.g.*, second sentence of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within

1 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,
2 designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party
3 desires to protect confidential information at trial, the issue should be addressed during the pre-
4 trial conference. The parties will meet and confer over the terms of a separate protective order,
5 if necessary, for trial purposes.

6 (c) Other tangible items: the producing party must affix in a prominent
7 place on the exterior of the container or containers in which the information or item is stored
8 the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant
9 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive the
12 designating party's right to secure protection under this agreement for such material. Upon
13 timely correction of a designation, the receiving party must make reasonable efforts to ensure
14 that the material is treated in accordance with the provisions of this agreement.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any party or non-party may challenge a
17 designation of confidentiality at any time. Unless a prompt challenge to a designating party's
18 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
19 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party
20 does not waive its right to challenge a confidentiality designation by electing not to mount a
21 challenge promptly after the original designation is disclosed.

22 6.2 Meet and Confer. The parties must make every attempt to resolve any
23 dispute regarding confidential designations without court involvement. Any motion regarding
24 confidential designations or for a protective order must include a certification, in the motion or
25 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
26 conference with other affected parties in an effort to resolve the dispute without court action.

1 The certification must list the date, manner, and participants to the conference. A good faith
2 effort to confer requires a face-to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
4 court intervention, the designating party may file and serve a motion to retain confidentiality
5 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The
6 burden of persuasion in any such motion shall be on the designating party. Frivolous
7 challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary
8 expenses and burdens on other parties) may expose the challenging party to sanctions. All
9 parties shall continue to maintain the material in question as confidential until the court rules on
10 the challenge.

11 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
12 OTHER LITIGATION

13 If a party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any information or items designated in this action as
15 "CONFIDENTIAL," that party must:

16 (a) promptly notify the designating party in writing and include a copy of the
17 subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena or order is
20 subject to this agreement. Such notification shall include a copy of this agreement; and

21 (c) cooperate with respect to all reasonable procedures sought to be pursued by
22 the designating party whose confidential material may be affected.

23 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
25 confidential material to any person or in any circumstance not authorized under this agreement,
26 the receiving party must immediately (a) notify in writing the designating party of the
27 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the

1 protected material, (c) inform the person or persons to whom unauthorized disclosures were
2 made of all the terms of this agreement, and (d) request that such person or persons execute the
3 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

4 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
5 PROTECTED MATERIAL

6 When a producing party gives notice to receiving parties that certain inadvertently
7 produced material is subject to a claim of privilege or other protection, the obligations of the
8 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
9 provision is not intended to modify whatever procedure may be established in an e-discovery
10 order or agreement that provides for production without prior privilege review. Parties shall
11 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

12 10. NON TERMINATION AND RETURN OF DOCUMENTS

13 Within 60 days after the termination of this action, including all appeals, each receiving
14 party must return all confidential material to the producing party, including all copies, extracts
15 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
16 destruction.

17 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
18 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
19 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
20 work product, even if such materials contain confidential material.

21 The confidentiality obligations imposed by this agreement shall remain in effect until a
22 designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED this 13th day March, 2018.

3 Davis Wright Tremaine LLP
4 Attorneys for Defendant

5 By 

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that, pursuant to Federal Rule of Evidence 502(d), the
3 disclosure of any documents in this proceeding shall not, for the purposes of this proceeding or
4 any other proceeding in any other court, constitute a waiver by the producing party of any
5 privilege applicable to those documents, including the attorney-client privilege, the attorney
6 work product protection, or any other privilege or protection recognized by law.

7 DATED this 15th day of March, 2018.

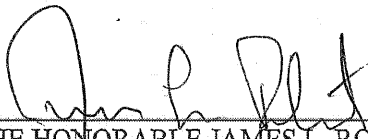
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9 THE HONORABLE JAMES L. ROBERT
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the King County Superior Court on [date] in the case of *Ricardo Castillo v. United Rentals (North America), Inc.*, U.S. District Court, Western District of Washington at Seattle Case No. 2:17-cv-01573-JLR. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the U.S. District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

DATED this ____ day of _____, 2018.

Signature

Printed name

City/State